IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2533 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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SHAKARIBEN JUSAJI - Petitioner(s)
Versus
SATISH BABUBHAI SHAH & 1 - Respondent(s)

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Appearance :
MR.P.M. THAKKAR, LD. SR. COUNSEL WITH MR. D.K. PUJ for Petitioner(s) : 1,
MR AMAR D MITHANI for Respondent(s) : 1,
MR RS SANJANWALA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 26/02/2007

ORAL JUDGMENT

1. Rule. Rule is waived by Mr. Amar Mithani, learned advocate for respondent No. 1 and Mr. R.S.

Sanjanwala, learned advocate for respondent No. 2.

1.1 Shakariben Jusaji, legal heir of Jusaji Chelaji, petitioner, has filed this petition under Article 227 of the Constitution of India with a prayer that this Court may issue a writ of mandamus or any other writ, order or direction quashing and setting aside the order dated 7.10.2006 passed by the learned Trial Judge in Special Civil Suit No. 1015 of 1995 and direct the learned Civil Judge (S.D.), Ahmedabad, to decide the matter expeditiously and appropriate directions be given to the trial Court in this behalf. I have heard Mr. P.M. Thakkar, learned sr. counsel with Mr. D.K. Puj, on behalf of the petitioner. Pursuant to the earlier order dated 12.2.2007 the Court has issued notice and the same has been served on the respondents. Affidavit of direct service has been filed by the petitioner. The respondents are served on 22.2.2007. Therefore, the matter has been taken up for final disposal today with consent of the parties.

2. PEDIGREE

Jusaji Chelaji Thakore (father)

(expired on 11.5.1982)

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Shakariben Jusaji Thakore (daughter)

3. The father of the petitioner Shri Jusaji Chelaji Thakore expired on 11.5.1982. During the time of the petitioner's father, he had executed a Will on 8.4.1980 which is at Annexure-A on page No. 21 of the petition bequeathing all his properties to the petitioner including the land Revenue Survey No. 158 admeasuring 2 acres 11 gunthas of the sim of village Bodakdev, taluka Daskroi. It may be noted that deceased Jusaji Chelaji Thakore, father of the petitioner, was an agriculturist and was holding various parcels of land comprising in different revenue survey numbers at village Bodakdev of Taluka Daskroi.

4. The petitioner was residing at her matrimonial house at village Santej. Chaturji Keshaji in collusion with the then Talati-cum-Mantri on 21.5.1982 i.e. within 11 days of death of the petitioner's father, got the entry mutated in village Form No. 6 being Entry No. 3258 as if the petitioner's father had executed a Will in his favour. It may be noted that ultimately it has been recorded by the authority that copy of the so-called Will which is alleged by Chaturji Keshaji has not been produced on record. Chaturji Keshaji sold the properties to respondent No. 2 i.e. Rameshbhai Ballubhai Desai on 28.6.2002. Respondent No. 2 sold the said land to respondent No. 1 i.e. Satish Babubhai Shah on 22.7.1993 under the registered Sale Deed.

4.1 Respondent No. 1 who was within the knowledge of falsehood of the transactions carried out by him in collusion with respondent No. 2 claiming the title from Chaturji Keshaji who alleged to have acquired title on the basis of the alleged Will of the father of the petitioner. Shri Satish Babubhai Shah filed a collusive Suit being Regular Civil Suit No. 1015 of 1995 against respondent No. 2 on 14.12.1995.

5. In the cause title of the said Suit, respondent No. 1 has mentioned that the summons of respondent No. 2 may be served upon his power of attorney, Rajviben Subhodbhai Gajrawala. The name of Rajviben Subhodbhai Gajrawala is apparently the name of wife of respondent No. 1. The wife of respondent No. 1 collusively submitted the purshis Exh. 17 that the application Exh. 5 may be heard with the Suit and the wife of respondent No. 1 made an endorsement that she has no objection if status quo is continued till then. It may be noted that the name of wife was shown in the said Suit in her maiden name.

6. Thus based on the aforesaid no objection given by the alleged power of attorney of respondent No. 2, the learned trial Judge passed order of status quo on 10.1.1996 on Exh. 5 application and the Suit was kept for framing of issues on 30.3.1996.

7. Being aggrieved and dissatisfied with the R.T.S. Proceedings, respondent No. 1 filed Special Civil Application No. 4206 of 1999. The said petition was disposed of by this Court (Coram: Y.B. Bhatt, J). This Court observed on 17.6.1999 that on the basis of the settled law on the basis of which it is directed that the disputed question of title shall be decided by the Civil Court.

8. Rameshbhai Ballubhai Desai, respondent No. 2, in his personal capacity has filed an application on 11.2.2000 under Order 1 Rule 10 of the C.P.C. for joining him party defendant in the Suit (i.e. Regular Civil Suit No. 1015 of 1995). On this application he has not paid process fees nor supplied copies of the application to the original plaintiff and to the defendant. From the proceedings it appears that the conduct of Rameshbhai Ballubhai Desai makes it clear that he is also a collusive party to the Suit. His application was, therefore, rejected by the learned trial Judge on 22.12.2005 though in between for not less than 25 times the matter was listed.

9. Thereafter, the petitioner moved an application at Exh. 34 for being joined as party defendant on 24.8.2004. However, the plaintiff has not raised any objection against the petitioner's application and he has also filed the purshis to that effect on 1.10.2004. The said application was allowed on 29.8.2005.

10. The petitioner, thereafter, filed her written statement as well as reply to the injunction application Exh. 42. The petitioner has also paid the Court fees of Rs. 11,650/- on 24.10.2005 making counter claim in the Suit.

11. Despite the order passed by the learned trial Judge directing the plaintiff to make an amendment in the plaint, the said amendment has not been carried out by the plaintiff. Even the order imposing the cost has also not been complied with by the plaintiff. In view of the aforesaid, the petitioner filed an application Exh. 52 for closing the stage of filing written statement of the plaintiff to the counter claim of the petitioner on 22.2.2006. The petitioner has also filed an application Exh. 53 for framing the issues on the petitioner's counter claim on 17.4.2006 and another application Exh. 54 stating that the plaintiff has not complied with the orders of the trial Court on 24.4.2006.

12. Thereafter, the petitioner moved an application Exh. 57 on 30.9.2006 for dismissing the Suit as the plaintiff was consistently not remaining present.

13. The learned trial Judge has passed order on 7.10.2006 stating that he has passed an order below application Exh. 99 in Special Civil Suit No. 188 of

1999 and since, Special Civil Suit No. 188 of 1999 – Regular Civil Suit No. 1015 of 1999 (correct No. is 1015 of 1995) and Special Civil Suit No. 195 of 1998 (correct No. is 195 of 1999) are in respect of the same property and over and above these, other proceedings are pending in other Courts and since one of the parties has moved an application before this Court and copy thereof is given to the learned trial Judge, if any party is in hurry to proceed with the matter, he can file an application before the District Court for the transfer of the case.

14. In view of the aforesaid circumstances, he has not to conduct these matters and after these matters are transferred, the matters are listed on 4.12.2006. Again on 4.12.2006, neither the plaintiff nor his advocate was present. Only the petitioner's advocate was present. However, instead of passing any order, the learned trial Judge has simply adjourned the matter to 10.1.2007 as per order passed in Special Civil Suit No. 188 of 1999.

15. Being aggrieved and dissatisfied with the aforesaid action of the learned trial Judge, the petitioner has filed this petition before this Court on 13.1.2007.

16. I have heard Mr. P.M. Thakkar, learned sr. counsel with Mr. D.K. Puj, learned advocate for the petitioner. I have also heard Mr. Amar Mithani, learned advocate for respondent No. 1 and Mr. R.S.

Sanjanwala, learned advocate for respondent No. 2.

17 Mr. P.M. Thakkar, learned sr. counsel, states that without adjudicating the matter on merits, this Court may dispose of the matter by giving certain directions to the learned trial Judge. In view of this, considering the peculiar facts and circumstances of the case if the following directions are issued it will be in the interest of justice.

17.1 The learned trial Judge is requested to hear and dispose of Suit No. 1015 of 1995 along with Special Civil Suit No. 195 of 1999 and any other suits which are clubbed together as expeditiously as possible.

17.2 The learned trial Judge will give an opportunity of hearing to both the sides and allow them to produce whatever documentary evidence and oral evidence which may be produced by them and thereafter decide the same in accordance with law.

17.3 As the Suit is of the year 1995, the learned trial Judge is requested to dispose of the matter as expeditiously as possible preferably by 31.7.2007

17.4 This Court makes it clear that this Court has not decided the matter on merits and therefore the learned trial Judge is requested to hear and dispose of the matter without being influenced by the order passed by this Court.

17.5 If the matter is heard and cannot be disposed of by 31.7.2007, the learned trial Judge is requested to submit his report to this Court stating the reasons as to why the said Suits are not disposed of by 31.7.2007.

In view of the above observations, this petition stands disposed of. Rule is discharged accordingly.

(K.M. MEHTA, J)

(pkn)